

Federal Aviation Reauthorization Act of 1996
(P.L. 104-264)

Signed by the President on October 9, 1996, Date of Enactment

(Excerpt)

TITLE III--AVIATION SECURITY

- Sec. 301. Report including proposed legislation on funding for airport security.
- Sec. 302. Certification of screening companies.
- Sec. 303. Weapons and explosive detection study.
- Sec. 304. Requirement for criminal history records checks.
- Sec. 305. Interim deployment of commercially available explosive detection equipment.
- Sec. 306. Audit of performance of background checks for certain personnel.
- Sec. 307. Passenger profiling.
- Sec. 308. Authority to use certain funds for airport security programs and activities.
- Sec. 309. Development of aviation security liaison agreement.
- Sec. 310. Regular joint threat assessments.
- Sec. 311. Baggage match report.
- Sec. 312. Enhanced security programs.
- Sec. 313. Report on air cargo.
- Sec. 314. Sense of the Senate regarding acts of international terrorism.

TITLE IV--AVIATION SAFETY (Excerpt)

- Sec. 401. Elimination of dual mandate.
- Sec. 402. Protection of voluntarily submitted information.

(Editor's Note: Each section of the law is immediately followed by enumerated language from the Joint Explanatory Statement of the Committee of Conference that indicates the proposals of each house and the compromise they reached, or Conference Substitute, in the final bill. This explanation is the "official" expressed intent of Congress, and occasionally clarifies what is written in law. The law includes elements of H.R. 3539 passed by the House in August, ideas from bills introduced by Senators Lautenberg and Reid, and provisions intended to be introduced by Senator Hutchison. It received overwhelming support from both houses, but particularly the Senate.)

TITLE III--AVIATION SECURITY

SEC. 301. REPORT INCLUDING PROPOSED LEGISLATION ON FUNDING FOR AIRPORT SECURITY.

(a) IN GENERAL.--Not later than 90 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration, in cooperation with other appropriate persons, shall conduct a study and submit to Congress a report on whether, and if so how, to transfer certain responsibilities of air carriers under Federal law for security activities conducted onsite at commercial service airports to airport operators or to the Federal Government or to provide for shared responsibilities between air carriers and airport operators or the Federal Government.

(b) CONTENTS OF REPORT.--The report submitted under this section shall--

(1) examine potential sources of Federal and non-Federal revenue that may be used to fund security activities, including providing grants from funds received as fees collected under a fee system established under subtitle C of title II of this Act and the amendments made by that subtitle; and

(2) provide legislative proposals, if necessary, for accomplishing the transfer of responsibilities referred to in subsection (a).

71. Study of Funding for Security

House Bill: No provision.

Senate Amendment

Section 301: 30-day FAA study of transferring security responsibilities from airlines to airports or to the government. Also includes certification of screening companies.

Conference Substitute

Sections 301 and 302: Senate provision, but change to a 90-day study done in cooperation with other appropriate officials. Make screening certification a separate section.

SEC. 302. CERTIFICATION OF SCREENING COMPANIES.

The Administrator of the Federal Aviation Administration is directed to certify companies providing security screening and to improve the training and testing of security screeners through development of uniform performance standards for providing security screening services.

SEC. 303. WEAPONS AND EXPLOSIVE DETECTION STUDY.

(a) IN GENERAL.--The Administrator of the Federal Aviation Administration shall enter into an arrangement with the Director of the National Academy of Sciences (or if the National Academy of Sciences is not available, the head of another equivalent entity) to conduct a study in accordance to this section.

(b) PANEL OF EXPERTS.--

(1) IN GENERAL.--In carrying out a study under this section, the Director of the National Academy of Sciences (or the head of another equivalent entity) shall establish a panel (hereinafter in this section referred to as the "panel").

(2) EXPERTISE.--Each member of the panel shall have expertise in weapons and explosive detection technology, security, air carrier and airport operations, or another appropriate area. The Director of the National Academy of Sciences (or the head of another equivalent entity) shall ensure that the panel has an appropriate number of representatives of the areas specified in the preceding sentence.

(c) STUDY.--The panel, in consultation with the National Science and Technology Council, representatives of appropriate Federal agencies, and appropriate members of the private sector, shall--

(1) assess the weapons and explosive detection technologies that are available at the time of the study that are capable of being effectively deployed in commercial aviation;

(2) determine how the technologies referred to in paragraph (1) may more effectively be used for promotion and improvement of security at airport and aviation facilities and other secured areas;

(3) assess the cost and advisability of requiring hardened cargo containers as a way to enhance aviation security and reduce the required sensitivity of bomb detection equipment; and

(4) on the basis of the assessments and determinations made under paragraphs (1), (2), and (3), identify the most promising technologies for the improvement of the efficiency and cost-effectiveness of weapons and explosive detection.

(d) COOPERATION.--The National Science and Technology Council shall take such actions as may be necessary to facilitate, to the maximum extent practicable and upon request of the Director of the National

Academy of Sciences (or the head of another equivalent entity), the cooperation of representatives of appropriate Federal agencies, as provided for in subsection (c), in providing the panel, for the study under this section--

- (1) expertise; and
- (2) to the extent allowable by law, resources and facilities.

(e) REPORTS.--The Director of the National Academy of Sciences (or the head of another equivalent entity) shall, pursuant to an arrangement entered into under subsection (a), submit to the Administrator such reports as the Administrator considers to be appropriate. Upon receipt of a report under this subsection, the Administrator shall submit a copy of the report to the appropriate committees of Congress.

(f) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated for each of fiscal years 1997 through 2001 such sums as may be necessary to carry out this section.

74. Weapons and Explosive Detection Study

House Bill: No provision.

Senate Amendment

National Academy of Science study of systems to detect weapons and explosives.

Conference Substitute

Section 303: Senate provision with the addition of hardened containers as an additional factor to be studied.

SEC. 304. REQUIREMENT FOR CRIMINAL HISTORY RECORDS CHECKS.

(a) IN GENERAL.--Section 44936(a)(1) is amended--

- (1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;
- (2) by striking "(1)" and inserting "(1)(A)"; and
- (3) by adding at the end the following:

"(B) The Administrator shall require by regulation that an employment investigation (including a criminal history record check in any case described in subparagraph (C)) be conducted for--

"(i) individuals who will be responsible for screening passengers or property under section 44901 of this title;

"(ii) supervisors of the individuals described in clause (i); and

"(iii) such other individuals who exercise security functions associated with baggage or cargo, as the Administrator determines is necessary to ensure air transportation security.

"(C) Under the regulations issued under subparagraph (B), a criminal history record check shall be conducted in any case in which--

"(i) an employment investigation reveals a gap in employment of 12 months or more that the individual who is the subject of the investigation does not satisfactorily account for;

"(ii) such individual is unable to support statements made on the application of such individual;

"(iii) there are significant inconsistencies in the information provided on the application of such individual; or

"(iv) information becomes available during the employment investigation indicating a possible conviction for one of the crimes listed in subsection (b)(1)(B).

"(D) If an individual requires a criminal history record check under subparagraph (C), the individual may be employed as a screener until the check is completed if the individual is subject to supervision."

(b) APPLICABILITY.--The amendment made by subsection (a)(3) shall apply to individuals hired to perform functions described in section 44936(a)(1)(B) of title 49, United States Code, after the date of the enactment of this Act; except that the Administrator of the Federal Aviation Administration may, as the Administrator determines to be appropriate, require such employment investigations or criminal history records checks for individuals performing those functions on the date of the enactment of this Act.

40. Background Checks on Screeners

House Bill

Section 412: This section permits FAA to require airlines to do background checks before hiring someone to screen passengers, their baggage, or cargo. This could include criminal history record checks only where the background investigation revealed a gap in employment of a year or more that is not satisfactorily explained. This applies only to screeners hired on or after the date of enactment. A screener may be hired while undergoing a background check if properly supervised.

Senate Amendment

Section 305: Require background checks for screeners and others associated with baggage or cargo. Lists situations where, at a minimum, criminal checks are required.

Conference Substitute

Section 304: Senate provision but delete the phrase "at a minimum" and add special rule from House bill allowing a screener needing a background check to continue working if properly supervised.

SEC. 305. INTERIM DEPLOYMENT OF COMMERCIALY AVAILABLE EXPLOSIVE DETECTION EQUIPMENT.

(a) IN GENERAL.--Section 44913(a) is amended--

- (1) by redesignating paragraph (3) as paragraph (4); and
- (2) by inserting after paragraph (2) the following:

"(3) Until such time as the Administrator determines that equipment certified under paragraph (1) is commercially available and has successfully completed operational testing as provided in paragraph (1), the Administrator shall facilitate the deployment of such approved commercially available explosive detection devices as the Administrator determines will enhance aviation security significantly. The Administrator shall require that equipment deployed under this paragraph be replaced by equipment certified under paragraph (1) when equipment certified under paragraph (1) becomes commercially available. The Administrator is authorized, based on operational considerations at individual airports, to waive the required installation of commercially available equipment under paragraph (1) in the interests of aviation security. The Administrator may permit the requirements of this paragraph to be met at airports by the deployment of dogs or other appropriate animals to supplement equipment for screening passengers, baggage, mail, or cargo for explosives or weapons."

(b) AGREEMENTS.--The Administrator is authorized to use noncompetitive or cooperative agreements with air carriers and airport authorities that provide for the Administrator to purchase and assist in installing advanced security equipment for the use of such entities.

75. Interim Deployment of Commercially Available Explosive Detection Equipment

House Bill

Section 101 of H.R. 3953 which passed the House on August 2, 1996, directs FAA to facilitate the deployment of commercially available explosive detection system while waiting for the certified system.

Senate Bill

Section 306: Similar provision but also gives FAA waiver authority.

Conference Substitute

Section 305: Senate provision.

And also,

84. Supplemental Screening

House Bill

Section 109 of H.R. 3953 directs FAA to consider using bomb sniffing dogs to supplement existing bomb detection systems. Section 110 authorizes Trust Fund spending for training and evaluation of K-9 teams at 50 largest airports.

Senate Amendment: No provision.

Conference Substitute

Added to Section 305 (Item 75) above by permitting the requirement to deploy commercially available explosive detection equipment to be met at airports by the deployment of dogs or other appropriate animals to supplement equipment for screening passengers, baggage, mail, or cargo for explosives or weapons.

SEC. 306. AUDIT OF PERFORMANCE OF BACKGROUND CHECKS FOR CERTAIN PERSONNEL.

Section 44936(a) is amended by adding at the end the following:

"(3) The Administrator shall provide for the periodic audit of the effectiveness of criminal history record checks conducted under paragraph (1) of this subsection."

76. Audit of Background Checks

House Bill

Section 103 of H.R. 3953 directs FAA to audit the criminal history records checks.

Senate Bill

Section 307 directs FAA to audit effectiveness of criminal history record checks.

Conference Substitute

Section 306: Senate provision.

SEC. 307. PASSENGER PROFILING.

The Administrator of the Federal Aviation Administration, the Secretary of Transportation, the intelligence community, and the law enforcement community should continue to assist air carriers in developing computer-assisted passenger profiling programs and other appropriate passenger profiling programs which should be used in conjunction with other security measures and technologies.

77. Passenger Profiling

House Bill

Section 105 of H.R. 3953 directs FAA, DOT, intelligence community, and law enforcement community to continue to assist airlines in developing computer-assisted passenger profiling.

Senate Bill

Section 308: Sense of Senate directing FAA to assist airlines in developing computer-assisted profiling and other appropriate passenger profiling programs to be used in conjunction with other security measures.

Conference Substitute

Section 307: House provision with “other appropriate measures” language from Senate.

SEC. 308. AUTHORITY TO USE CERTAIN FUNDS FOR AIRPORT SECURITY PROGRAMS AND ACTIVITIES.

(a) IN GENERAL.--Notwithstanding any other provision of law, funds referred to in subsection (b) may be used for the improvement of facilities and the purchase and deployment of equipment to enhance and ensure the safety and security of passengers and other persons involved in air travel.

(b) COVERED FUNDS.--The following funds may be used under subsection (a):

- (1) Project grants made under subchapter I of chapter 471 of title 49, United States Code.
- (2) Passenger facility fees collected under section 40117 of title 49, United States Code.

78. Use of AIP and PFC for Security

House Bill

Section 106 of H.R. 3953 permits AIP and PFC funds to be used for safety and security programs at airports.

Senate Bill

Section 309 is the same.

Conference Substitute

Section 308: House and Senate provisions.

SEC. 309. DEVELOPMENT OF AVIATION SECURITY LIAISON AGREEMENT.

The Secretary of Transportation and the Attorney General, acting through the Administrator of the Federal Aviation Administration and the Director of the Federal Bureau of Investigation, shall enter into an

interagency agreement providing for the establishment of an aviation security liaison at existing appropriate Federal agencies' field offices in or near cities served by a designated high-risk airport.

79. Security Liaison Agreement

House Bill: No provision.

Senate Amendment

Section 310: Directs FAA and FBI to establish liaison near high risk airports.

Conference Substitute

Section 309: Senate provision.

SEC. 310. REGULAR JOINT THREAT ASSESSMENTS.

The Administrator of the Federal Aviation Administration and the Director of the Federal Bureau of Investigation shall carry out joint threat and vulnerability assessments on security every 3 years, or more frequently, as necessary, at each airport determined to be high risk.

80. Threat Assessment

House Bill: No provision.

Senate Amendment

Section 311 directs FAA and FBI to carry out threat assessments at high risk airports.

Conference Substitute

Section 310: Senate but insert “each” before “airports”.

SEC. 311. BAGGAGE MATCH REPORT.

(a) REPORT.--If a bag match pilot program is carried out as recommended by the White House Conference on Aviation Safety and Security, not later than the 30th day following the date of completion of the pilot program, the Administrator of the Federal Aviation Administration shall submit to Congress a report on the safety, effectiveness, and operational effectiveness of the pilot program. The report shall also assess the extent to which implementation of baggage match requirements (coupled with the best available technologies and methodologies, such as passenger profiling) enhance domestic aviation security.

(b) SENSE OF THE SENATE.--It is the sense of the Senate that the Administrator should work with airports and air carriers to develop, to the extent feasible, effective domestic bag matching proposals.

81. Baggage Match

House Bill: No provision.

Senate Amendment

Section 312: Requires the FAA to report within 30 days on the domestic baggage match program recommended by the Gore Commission. Sense of Senate that FAA should work with airlines & airports on feasible, effective bag match.

Conference Substitute

Section 311: Senate provision but require only if baggage match program is actually carried out. This is intended to remove any implication that this provision is designed to mandate such a baggage match program. Includes sense of Senate.

SEC. 312. ENHANCED SECURITY PROGRAMS.

(a) IN GENERAL.--Chapter 449 is amended by adding at the end of subchapter I the following:

"S 44916. Assessments and evaluations

"(a) PERIODIC ASSESSMENTS.--The Administrator shall require each air carrier and airport (including the airport owner or operator in cooperation with the air carriers and vendors serving each airport) that provides for intrastate, interstate, or foreign air transportation to conduct periodic vulnerability assessments of the security systems of that air carrier or airport, respectively. The Administration shall perform periodic audits of such assessments.

"(b) INVESTIGATIONS.--The Administrator shall conduct periodic and unannounced inspections of security systems of airports and air carriers to determine the effectiveness and vulnerabilities of such systems. To the extent allowable by law, the Administrator may provide for anonymous tests of those security systems."

(b) CLERICAL AMENDMENT.--The table of sections for such chapter is amended by inserting after the item relating to section 44915 the following:

"44916. Assessments and evaluations."

82. Enhanced Security Programs

House Bill: No provision.

Senate Amendment

Section 313: Requires airlines and airports to periodically assess their security. The FAA must periodically audit these assessments and make unannounced and anonymous inspections and tests of security systems.

Conference Substitute

Section 312: Senate provision.

SEC. 313. REPORT ON AIR CARGO.

(a) REPORT.--Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation shall transmit to Congress a report on any changes recommended and implemented as a

result of the White House Commission on Aviation Safety and Security to enhance and supplement screening and inspection of cargo, mail, and company-shipped materials transported in air commerce.

(b) CONTENTS.--The report shall include--

- (1) an assessment of the effectiveness of the changes referred to in subsection (a);
- (2) an assessment of the oversight by the Federal Aviation Administration of inspections of shipments of mail and cargo by domestic and foreign air carriers;
- (3) an assessment of the need for additional security measures with respect to such inspections;
- (4) an assessment of the adequacy of inspection and screening of cargo on passenger air carriers; and
- (5) any additional recommendations, and if necessary any legislative proposals, necessary to carry out additional changes.

(c) SENSE OF THE SENATE.--It is the sense of the Senate that the inspection of cargo, mail, and company-shipped materials can be enhanced.

83. Air Cargo

House Bill

Section 107 of H.R. 3953 lists 3 items relating to air cargo for FAA to study.

Senate Bill

Section 314: Requires DOT to report on changes recommended by the Gore Commission with respect to air cargo. Sense of the Senate that inspection of cargo, mail, and company shipped material can be enhanced.

Conference Substitute

Section 313: Senate bill except FAA is directed to do study and the 3 items from the House bill are incorporated. Includes Sense of the Senate.

SEC. 314. SENSE OF THE SENATE REGARDING ACTS OF INTERNATIONAL TERRORISM.

(a) FINDINGS.--The Senate finds that--

- (1) there has been an intensification in the oppression and disregard for human life among nations that are willing to export terrorism;
- (2) there has been an increase in attempts by criminal terrorists to murder airline passengers through the destruction of civilian airliners and the deliberate fear and death inflicted through bombings of buildings and the kidnapping of tourists and Americans residing abroad; and
- (3) information widely available demonstrates that a significant portion of international terrorist activity is state-sponsored, -organized, -condoned, or -directed.

(b) SENSE OF THE SENATE.--It is the sense of the Senate that if evidence establishes beyond a clear and reasonable doubt that any act of hostility towards any United States citizen was an act of international terrorism sponsored, organized, condoned, or directed by any nation, a state of war should be considered to exist or to have existed between the United States and that nation, beginning as of the moment that the act of aggression occurs.

91. International Terrorism

House Bill: No provision.

Senate Amendment

Section 414: Sense of Senate that state sponsored terrorism is an act of war.

Conference Substitute: Senate provision.

An item not associated with a section in the final law:

94. Advance Electronic Transmission of Cargo and Passenger Information

House Bill: No provision.

Senate Amendment

Section 417: Requires airlines to provide the manifest in advance.

Conference Substitute

The Managers have receded to the House position. Senator Graham offered the provision in a desire to improve safety and security. The Managers are aware of the importance of the need for the Customs Service to work with the airlines to provide the highest levels of protection to the traveling public. The decision not to include the specific language should not be read to suggest a lack of agreement with the spirit and intent of the provision.

TITLE IV--AVIATION SAFETY (Excerpt)

SEC. 401. ELIMINATION OF DUAL MANDATE.

(a) SAFETY CONSIDERATIONS IN PUBLIC INTEREST.--

(1) SAFETY AS HIGHEST PRIORITY.--Section 40101(d) is amended--

(A) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively; and

(B) by inserting before paragraph (2), as so redesignated, the following:

"(1) assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce.".

(2) ELIMINATION OF PROMOTION.--Section 40101(d) is further amended--

(A) in paragraph (2), as redesignated by paragraph (1)(A) of this subsection, by striking "its development and"; and

(B) in paragraph (3), as so redesignated--

(i) by striking "promoting, encouraging," and inserting "encouraging"; and

(ii) by inserting before the period at the end ", including new aviation technology".

(b) FAA SAFETY MISSION.--

(1) IN GENERAL.--Section 40104 is amended--

(A) by inserting "safety of" before "air commerce" in the section heading;

(B) by inserting "SAFETY OF" before "AIR COMMERCE" in the heading of subsection (a); and

(C) by inserting "safety of" before "air commerce" in subsection (a).

(2) CLERICAL AMENDMENT.--The table of sections for chapter 401 is amended by striking the item relating to section 40104 and inserting the following:

"40104. Promotion of civil aeronautics and safety of air commerce.".

SEC. 402. PROTECTION OF VOLUNTARILY SUBMITTED INFORMATION.

(a) IN GENERAL.--Chapter 401, as amended by section 253 of this Act, is further amended by adding at the end the following:

"S 40123. Protection of voluntarily submitted information

"(a) IN GENERAL.--Notwithstanding any other provision of law, neither the Administrator of the Federal Aviation Administration, nor any agency receiving information from the Administrator, shall disclose voluntarily-provided safety or security related information if the Administrator finds that--

"(1) the disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and

"(2) withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities.

"(b) REGULATIONS.--The Administrator shall issue regulations to carry out this section."

(b) CONFORMING AMENDMENT.--The table of sections for such chapter is amended by adding at the end the following: "40123. Protection of voluntarily submitted information."